Supreme Court, U.S.
FILED
04 738 SEP 24 2004
OFFICE OF THE CLERK

No. _____

In The
Supreme Court of the United States

CLAIR A. CALLAN,

Petitioner,

v.

GEORGE W. BUSH,
Acting As President Of The United States,

Respondent.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Eighth Circuit

PETITION FOR A WRIT OF CERTIORARI

CLAIR A. CALLAN, *pro se*

1621 H Street
Fairbury, Nebraska 68352
(402) 729-3119

QUESTION PRESENTED FOR REVIEW

Does the Petitioner have standing in Federal Court on the basis of a violation of the War Powers Act of 1973 to seek a Temporary Restraining Order/Preliminary Injunction against the President of the United States of America to cease all non-defensive military action in Iraq and an order to house the armed forces of the United States in secure locations until an agreement is reached between the United States of America and the United Nations?

PARTIES TO THE PROCEEDING

The parties to this proceeding are:

Clair A. Callan, an individual; and
George W. Bush, President of the United States of America

TABLE OF CONTENTS

	Page
QUESTION PRESENTED FOR REVIEW	i
PARTIES TO THE PROCEEDING	ii
CITATIONS OF OPINIONS AND ORDERS ENTERED IN THIS CASE	1
BASIS FOR SUPREME COURT JURISDICTION	1
FEDERAL AND STATE STATUTORY PROVISIONS INVOLVED IN THIS CASE	1
STATEMENT OF THE CASE.....	2
ARGUMENT	4
I. The Iraq Resolution to use military forces in Iraq violates the purpose, intent, spirit, and specific language of the War Powers Act of 1973	4
II. Under the unique circumstances of this case Constitutional interpretation and construction of Acts of Congress is required	13
CONCLUSION	22
APPENDIX	
Opinion of the United States Court of Appeals for the Eighth Circuit filed July 26, 2004	App.1
Judgment of the United States District Court for the District of Nebraska, filed December 2, 2003..	App. 2
Memorandum and Order of the United States District Court for the District of Nebraska, filed December 2, 2003	App.3

TABLE OF CONTENTS - Continued

Motion for Temporary Restraining Order/Preliminary Injunction dated November 23, 2003.... App. 5

House Joint Resolution Authorizing Use of Force Against Iraq ..... App. 7

The War Powers Act of 1973 ..... App. 16

TABLE OF AUTHORITIES

Page

Cases

Atlee v. Laird, 347 F. Supp. 689 (E.D.Pa.1972)..... 19

Baker v. Carr, 369 U.S. 186 (1962)..... 15, 19

Berk v. Laird, 429 F.2d 302 (2d Cir. 1970)..... 16

Campbell v. Clinton, 52 F. Supp. 2d 34 (1999)..... 14

Comm'n v. Schor, 478 U.S. 833 (1986)..... 17

Communications Workers v. Beck, 487 U.S. 735 (1988)..... 16

Crockett v. Reagan, 558 F. Supp. 893 (D.D.C. 1982)..... 14

Dellums v. Bush, No. 90-2866 (D.D.C. filed Nov. 20, 1990)..... 14

Drinan v. Nixon, 364 F. Supp. 854 (1973)..... 19

Edward J. DeBartolo Corp. v. Florida Gulf Coast, 485 U.S. 568 (1988)..... 17

George Moore Ice Cream Co. v. Rose, 289 U.S. 373 (1933)..... 17

Hirabavashi v. United States, 320 U.S. 81 (1943).... 14

INS v. Chadha, 462 U.S. 919 (1983)..... 20

Lichter v. United States, 334 U.S. 742 (1948)..... 21

Lowry v. Reagan, 676 F Supp 333 (1987, DC Dist Col)..... 14

Mitchell v. Laird, 488 F.2d 611 (D.C. Cir. 1973)..... 15

Nixon v. United States, 506 U.S. 224,234 (1993)..... 18

TABLE OF AUTHORITIES - Continued

Page

Cases

Orlando v. Laird, 443 F.2d 1039 (2d Cir. 1971)..... 16

Pennsylvania Dept. of Corrections v. Yeskev, 524 U.S. 206 (1998)..... 17

United States v. Locke, 471 U.S. 84 (1985)..... 17

Utah v. Evans, 536 U.S. 452 (2002)..... 18

Whitney v. California, 274 U.S. 357 (1926)..... 14

Statutes

50 USCS 1541..... 1, 2, 5, 12

50 USCS 1541, Sec. 2. (c)..... 6

50 USCS 1541, Sec. 3..... 6

50 USCS 1541, Sec. 4. (a)..... 7

50 USCS 1541, Sec. 4. (a) (3) (A)..... 7

50 USCS 1541, Sec. 8. (c)..... 7

50 USCS 1701..... 12

50 USCS 1702..... 13

Constitution

Article 1, Section 8 of the *United States Constitution*..... 2, 3, 5

Article III, Section 2 of the *United States Constitution*..... 13

CITATIONS OF OPINIONS AND ORDERS ENTERED IN THIS CASE

1. Callan v. George W. Bush, No. 03-4047 (8th Cir. 2004)
2. Callan v. George W. Bush, No. 4:03CV3405
3. (D. Neb. Dec. 2, 2003)
4. Callan v. George W. Bush, No 4:03CV3405 (D. Neb. Dec. 2, 2003)

BASIS FOR SUPREME COURT JURISDICTION

The Court of Appeals for the Ninth Circuit entered its judgment on December 2, 2003, *Appendix at 1.* Petitioner Clair A. Callan seeks review of that judgment on a writ of certiorari. This Court has jurisdiction under 28 U.S.C. § 1254(1) to review on a writ of certiorari the judgment of the federal court of appeals. This petition is timely filed under 28 U.S.C. § 2101(c) and under Rule 13.3 of this Court.

FEDERAL AND STATE STATUTORY PROVISIONS INVOLVED IN THIS CASE

The War Powers Act of 1973 [50 USCS §§ 1541 et seq.] (Appendix at App. 38)

STATEMENT OF THE CASE

A military invasion of Iraq with overwhelming military force – under the ostensible authority of Article 1, Section 8 of the United States Constitution, Presidential powers, the War Powers Resolution of 1973,[2] or the Authorization for Use of Military Force Against Irag Resolution of 2002 [3]—is constitutionally objectionable and a violation of existing Congressional Acts intended to *narrowly define the circumstances where military force may be used.*

The case at bar does *not* require the court to decide whether war on Iraq is morally or politically right or wrong. This case does not involve the resolution of matters of foreign affairs or political issues. Neither inherent expertise nor ready access to the type of current information necessary to render informed and valid judgments as to the wisdom of executive and congressional actions involving this country's relations with other sovereigns is necessary in this case. The decision of the court may be based solely upon the Constitution, the War Powers Resolution, the Iraq Resolution and common sense interpretation of plain language. A

---

[2] "The War Powers Resolution was passed near the end of the Vietnam War, in an effort to ensure that in the future Congress would be less likely to abdicate its constitutional responsibility to decide whether the nation should go to war. Ely, *War and Responsibility* 48. In other words, the purpose of the War Powers Resolution is to prevent future Vietnams." The War Powers Act of 1973 was made Under Article I, Section 8, of the Constitution which specifically provided that the Congress shall have the power to make all laws necessary and proper for carrying into execution, not only its own powers but aiso all other powers vested by the Constitution in the Government of the United States, or in any department or officer thereof.

decision by the court – that the use of massive military forces in a war on Iraq – is not permitted under the totality of the circumstances, will not affect the President's *inherent* power to employ military force to protect the United States where there is a clear imminent threat to national security.

The determination sought is one as to whether the use of overwhelming military force to invade Iraq, change regime, or to establish democracy is beyond the authority of the President and Congress under the circumstances that existed. The issue squarely before a court is whether the Iraq Resolution "exceeded" powers granted to the President and the Congress by Article 1, Section 8 of the United States Constitution and the specific requirements of the War Powers Resolution (which is by reference incorporated into the Iraq Resolution).

The Iraq Resolution was used to deploy massive military force under circumstances which did not meet *specific* requirements of the War Powers Resolution. It is irrelevant that the President and the Congress may have agreed upon the Iraq Resolution because they both exceeded their constitutional and statutory power in doing so.

The court is urged to act solely upon the "inescapable duty of seeing that the mandates of the Constitution are obeyed" in peace as well as war. Enforcement of the Constitution and the War Powers Resolution of 1973 protects the United States against "clear imminent threats" to this nation and is required before United States military forces

---

[3] Hereinafter "Iraq Resolution."

can be deployed to other countries for that purpose.[4] There has been no Congressional or Presidential finding, assertion, or contention that Iraq presents this nation with a clearly "imminent" threat to national security or that *Iraq* poses an "unusual" or "extraordinary" threat to this nation. The absence of these specific facts makes the use of overwhelming military force on Iraq objectionable on constitutional and statutory grounds.

ARGUMENT

I. The Iraq Resolution Violates the Purposes, Intent, Spirit, and Specific Language of the War Powers Act of 1973

United States military forces may only be deployed "where *imminent* involvement in hostilities is *clearly indicated by the circumstances*," and to be "exercised *only* pursuant to (1) a declaration of war, (2) specific statutory authorization, or (3) a national emergency created by attack upon the United States, its territories or possessions, or its armed forces."[5] (Emphasis added.) There was no resolution or finding in the Iraq Resolution that a "national emergency" has been created by an attack upon the United States, its territories or possessions, or its armed forces by Iraq. There has been no declaration of war on Iraq and specific statutory authorization under the Iraq Resolution can not be legally

---

[4] The War Powers Act of 1973 does permit troop deployment into certain "hostilities." However, as discussed below, that situation does not "now" exist in Iraq and would not be here applicable. If the "hostilities" justification is now being applied, it is being unconstitutionally applied or the provision is unconstitutional as vague and overbroad since it is subject to application in situations beyond constitutional permission.

[5] See 50 USCS §§ 1541.SEC.2.(c)

made without a *clearly imminent threat* to the "national security."

There was absolutely no finding of fact, assertion, contention, or resolution whatsoever contained anywhere within the four corners of the Iraq Resolution that *Iraq* presented an "imminent" threat[6] to the national security of America. The Iraq Resolution directly conflicts with the War Powers Resolution of 1973 which was designed to prevent another Vietnam. The Iraq Resolution does not even attempt to comply with the specific mandates of the War Powers Resolution[7] which requires "strict"[8] adherence to its provisions. The use of United States military forces can "only" be deployed under specific "clearly" defined circumstances mandated by The War Powers Resolution of 1973. The Congress did not find any of these specific and necessary facts to exist – within the four corners of Iraq Resolution. Accordingly, the Iraq Resolution does not lawfully permit the President, Secretary of Defense, or

---

[6] See Iraq Resolution. There are numerous references to "threat" and circumstances from which "threat" may be inferred in the Iraq Resolution. However, nowhere in the Iraq Resolution is there any reference whatsoever to "imminent" threat strictly required by The War Powers Act of 1973. Absent such specific finding or assertion of "imminent" threat the Iraq Resolution is objectionable on its face as a matter of law. This is a nation of laws and neither the Congress nor the President has any authority to act in violation of them.

[7] The War Powers Act of 1973 is binding law and made to further the purposes of Article I, Section 8 of the United States Constitution.

[8] In enacting The War Powers Act of 1973 Congress made clear that "strict" compliance with its term is required. Congress specifically stated, "the sense of the Congress that the provisions of the War Powers Resolution [50 USCS §§ 1541 et seq.] be *strictly* adhered to and that the congressional consultation process specified by such Resolution be utilized *strictly* according to the terms of the War Powers Resolution [50 USCS §§ 1541 et seq.]."

Congress the use of military force in Iraq. A review of the War Powers Resolution and the Iraq Resolution makes this clear.

"*Clearly Indicated*" *and* "*Imminent*" *Requirements*. The word "imminent" is used in the War Powers Resolution five (5) times to define when military force is authorized. Under "Purpose and Policy," ("into situations where *imminent* involvement in hostilities is *clearly indicated* by the circumstances"), the word "imminent" is used two (2) times.[9] It is used under the section entitled "Consultation"[10] ("into hostilities or into situations where *imminent* involvement in hostilities is *clearly indicated* by the circumstances"). It is used under the section entitled "Reporting"[11] in "absence of a declaration of war" ("into

---

[9] PURPOSE AND POLICY – SEC. 2. (a) It is the purpose of this joint resolution to fulfill the intent of the framers of the Constitution of the Unites States and insure that the collective judgment of both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities, or into *situations where imminent involvement in hostilities is clearly indicated by the circumstances*, and to the continued use of such forces in hostilities or in such situations. (Emphasis added.)
PURPOSE AND POLICY – SEC. 2. (c) The constitutional powers of the President as Commander-in-Chief to introduce United States Armed Forces into hostilities, or into situations where *imminent involvement in hostilities is clearly indicated by the circumstances*, are exercised only pursuant to (1) a declaration of war, (2) specific statutory authorization, or (3) a national emergency created by attack upon the United States, its territories or possessions, or its armed forces. (Emphasis added.)

[10] CONSULTATION – SEC. 3. The President in every possible instance shall consult with Congress before introducing United States Armed Forces into hostilities or into situations where *imminent involvement in hostilities is clearly indicated by the circumstances*, and after every such introduction shall consult regularly with the Congress until United States Armed Forces are no longer engaged in hostilities or have been removed from such situations. (Emphasis added.)

[11] REPORTING – Sec. 4. (a) In the absence of a declaration of war, in any case in which United States Armed Forces are introduced—(1) into hostilities or into situations *where imminent involvement in hostilities is*

hostilities or into situations where *imminent* involvement in hostilities is *clearly indicated* by the circumstances"), and it is used under the section entitled "Interpretation of Joint Resolution"[12] ("there exists an *imminent threat* that such forces will become engaged, in hostilities"). Without question, the War Powers Resolution (incorporated in the Iraq Resolution) requires a "clearly" defined "imminent" threat before United States armed forces can be interjected to protect national security.

More importantly, the War Powers Resolution specifically sets forth three (3) circumstances under which military forces may be utilized. Under "Purpose and Policy, Section 2. (c)," the Congress was specific, stating:

> "The constitutional powers of the President as Commander-in-Chief to introduce United States Armed Forces into *hostilities*, or into situations where *imminent* involvement in hostilities is *clearly* indicated by the circumstances, are exercised *only* pursuant to (1) *a declaration of war*, (2) *specific statutory authorization*, or (3) a *national emergency created by attack upon the United States, its territories*

---

clearly indicated by the circumstances...(Emphasis added.) In addition, Sec. 4. (a) (3) (A) requires that "the circumstances necessitating the introduction of United States Armed Forces" be reported.

[12] INTERPRETATION OF JOINT RESOLUTION – SEC. 8. (c) For purposes of this joint resolution, the term "introduction of United States Armed Forces" includes the assignment of members of such armed forces to command, coordinate, participate in the movement of, or accompany the regular or irregular military forces of any foreign country or government when such military forces are engaged, or there exists an *imminent threat* that such forces will become engaged, in hostilities. (Emphasis added.)

> *or possessions, or its armed forces.*" (Section. 2. (c)) (Emphasis added.)

The Iraq Resolution must be interpreted in terms of the War Powers Act. The Iraq Resolution specifically refers to and incorporates the War Powers Resolution into the Iraq Resolution. The Iraq Resolution was specific that "Nothing in this joint resolution supersedes *any requirement* of the War Powers Resolution." (Emphasis added.) In subsection (c) (2) regarding the "War Powers Resolution Requirements," the Congress stated:

> "APPLICABILITY OF OTHER REQUIREMENTS – *Nothing in this joint resolution supersedes any requirement of the War Powers Resolution.*" (Emphasis added.)

Accordingly, the provisions of the War Powers Resolution remain in effect under the Iraq Resolution and are part of it. None of the three (3) specific reasons set forth in the War Powers Resolution under "Purpose and Policy, Section 2. (c) have been met.

1. There has been no specific declaration of war on Iraq by Congress.

The title of "House Joint Resolution Authorizing Use of Force Against Iraq, October 10, 2002" establishes an authorization to use military force against Iraq, but no language in the resolution can be construed as a *specific* declaration of "war" on Iraq. There is repeated use of "war on terrorism," but the terms "war on Iraq" or "declaration of war" are never used. Congress is presumed to choose its

words carefully with full appreciation of their meaning. The omission of a declaration of "war" on Iraq must be interpreted to mean that no specific declaration of war on Iraq was intended.

2. The specific authorization to use military force in Iraq does not meet the "clearly" evident and "imminent" threat requirements of the War Powers Resolution.

The Iraq Resolution makes numerous assertions in the "whereas" preamble to the resolution. None meet the "clear" or "imminent" requirements of the War Powers Resolution. The Iraq Resolution asserts, among other things, that Iraq has "demonstrated its continuing hostility toward, and willingness to attack, the United States," "attempt[ed] in 1993 to assassinate former President Bush," "fir[ed] on many thousands of occasions on United States and Coalition Armed Forces engaged in enforcing the resolutions of the United Nations Security Council."[13] "demonstrated capability and willingness to use weapons of mass destruction" (on others which do not include the United States), and, Congress asserts that there is a "risk" that the current Iraqi regime "will either employ those weapons to launch a surprise attack against the United States or its Armed Forces or provide them to international terrorists" and that these circumstances "combine to justify action by the United States to defend

---

[13] "Whereas the current Iraqi regime has demonstrated its continuing hostility toward, and willingness to attack, the United States, including by attempting in 1993 to assassinate former President Bush and by firing on many thousands of occasions on United States and Coalition Armed Forces engaged in enforcing the resolutions of the United Nations Security Council;" (See paragraph 10.)

itself."[14] It was asserted that "members of al Qaida, an organization bearing responsibility for attacks on the United States, its citizens, and interests, including the attacks that occurred on September 11, 2001, are known to be in Iraq.[15] It is asserted that "Iraq continues to aid and harbor other international terrorist organizations, including organizations that threaten the lives and safety of United States citizens" and that the "attacks on the United States of September 11, 2001, underscored the gravity of the threat posed by the acquisition of weapons of mass destruction by international terrorist organizations."

There may be no question that there is an imminent and clear threat of terrorism in the United States. There may even be valid concerns about the future potential of the present Iraq regime to participate in the terrorism. However, the War Powers Resolution (incorporated in the Iraq Resolution) requires more to deploy overwhelming military force in a foreign country. Regardless of the numerous assertions, including violations of United Nations resolutions, the Iraq Resolution does not assert, contend, allege, or resolve, that there is "clear" evidence, or any evidence, that Iraq poses an "imminent" threat to the United States or its allies. Accordingly, the Iraq Resolution is objectionable under the War Powers Resolution.

---

[14] "Whereas Iraq's demonstrated capability and willingness to use weapons of mass destruction, the risk that the current Iraqi regime will either employ those weapons to launch a surprise attack against the United States or its Armed Forces or provide them to international terrorists who would do so, and the extreme magnitude of harm that would result to the United States and its citizens from such an attack, combine to justify action by the United States to defend itself;" (See paragraph 11.)

[15] It has been reported by the President and the CIA that al Qaida exists in at least sixty (60) other countries.

3. There has been no "national emergency" created by attack upon the United States by Iraq, its territories or possessions, or its armed forces.

Neither the President nor the Congress has declared a "national emergency" that specifically relates to or that has been caused *by Iraq* or the regime in Iraq. In other words, Iraq does not present an "unusual and extraordinary threat" to the United States. Although the Iraq Resolution asserts that Iraq poses a "threat," it does not go so far as to assert that Iraq is "clearly" an "imminent" threat or that it poses an "unusual" or "extraordinary" threat. Such assertions appear to be minimum requirements for the use of overwhelming military force upon Iraq or any sovereign nation.

4. That "hostilities" under the War Powers Resolution did not exist in Iraq or between Iraq and another nation sufficient to permit the use of military force in Iraq.

Although the United States may have historic precedent for involving itself in "hostilities"[16]—conflicts between nations, certain conflicts within nations, or to prevent genocide – there was no "finding" or resolution by Congress contained in the Iraq Resolution that such "hostilities" existed *with or within Iraq* at the time of the Iraq resolution.[17]

---

[16] See 50 USCS §§ 1541, Sec. 4. (a) – In the absence of a declaration of war, in any case in which United States Armed Forces are introduced— (1) into hostilities or into situations where imminent involvement in hostilities *is clearly indicated by the circumstances*; (Emphasis added.)

[17] The Court is not requested to take judicial notice that at the time of the Iraq Resolution no such "hostilities" existed nor do they now exist to justify armed conflict with Iraq.

5. There is a need to define "hostilities" under the War Powers Resolution and the Iraq Resolution to use military force in Iraq.

"Hostilities" under the War Powers Resolution has not been clearly defined. It is the contention herein that "hostilities" did not exist *in Iraq or between Iraq and another nation* sufficient to permit the use of military force in Iraq. Because the term "hostilities" may be applied to even the most minimal of conflicts or disputes, the term should be defined to prevent unconstitutional application by Congress or the President to situations where none is declared to exist. Surely, the war on terrorism is not enough alone to constitute sufficient grounds for "war" on nations under the guise of "hostilities" when there is no evidence of conflict between nations or something that parallels the genocide such as existed in Kosovo or Bosnia. There must be constitutional standards.

6. That 50 USCS § 1701 should be considered in interpreting the Iraq Resolution since the President has not declared a "national emergency" with respect to Iraq.

50 USCS § 1701[18] indicates that an "Unusual and extraordinary threat" may be required for a "declaration of

---

[18] 50 USCS § 1701 (2003) provides, "Unusual and extraordinary threat; declaration of national emergency; exercise of Presidential authorities.

(a) Any authority granted to the President by section 203 [50 USCS § 1702] may be exercised to deal with any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States, if the President declares a national emergency with respect to such threat.

national emergency." 50 USCS § 1701 grants to the President authority to perform certain acts to deal with "any unusual and extraordinary threat," which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States, if the President declares a "national emergency" with respect to such threat. The authority granted to the President under this section may "only" be exercised to deal with an "unusual and extraordinary" threat with respect to which "a national emergency has been declared" and "may not be exercised for any other purpose." Any exercise of such authority to deal with any new threat shall be based on a new declaration of national emergency, which must have some nexus to such threat.

II. Under the Unique Circumstances of This Case Constitutional Interpretation and Construction of Acts of Congress is Required.

This case presents issues regarding the duty of this court to interpret Constitutional law and acts of Congress.[19]

(b) The authorities granted to the President by section 203 [50 USCS § 1702] may only be exercised to deal with an unusual and extraordinary threat with respect to which a national emergency has been declared for purposes of this title [50 USCS §§ 1701 et seq.] and may not be exercised for any other purpose. Any exercise of such authorities to deal with any new threat shall be based on a new declaration of national emergency, which must be with respect to such threat.

[19] Article III, Section 2 of the United States Constitution provides as follows: "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States...to Controversies to which the United States shall be a Party...." There have been numerous lawsuits, which have questioned the allocation of war powers as between the two political branches that support the conclusion that the allocation provided by the framers of the Constitution in the text of that document is far from clear. *See e.g.*, *Mitchell v. Laird*, 159 U.S.

In *Hirabayashi v. United States*, 320 U.S. 81 (1943) that United States Supreme Court considered a wartime act and its enforcement. With respect to the duty of the Court Justice Murphy said,

> "*While this Court sits, it has the inescapable duty of seeing that the mandates of the Constitution are obeyed.* That duty exists in time of war as well as in time of peace, and in its performance we must not forget that few indeed have been the invasions upon essential liberties which have not been accompanied by pleas of urgent necessity advanced in good faith by responsible men. Cf. Mr. Justice Brandeis concurring in *Whitney v. California*, 274 U.S. 357, 372." (Emphasis added.)

In *Campbell v. Clinton*, 52 F. Supp. 2d 34 (1999) the President argued that the case raised a non-justiciable political question. That case made clear that in every case involving war powers and foreign relations, "The Court....must conduct a discriminating analysis of the particular question posed" in order to determine whether the issue is justiciable."[20] That court was specific:

App. D.C. 344, 488 F.2d 611 (D.C. Cir. 1973) (U.S. military involvement in Indochina); *Dellums vs. Bush*, No. 90-2866 (D.D.C. filed Nov. 20, 1990) (Saudi Arabia/Persian Gulf deployment); *Lowry v. Reagan*, 676 F. Supp. 333 (1987) (U.S. reflagging and military escort operation in Persian Gulf); *Crockett v. Reagan*, 558 F. Supp. 893 (D.D.C. 1982), *aff'd*, 720 F.2d 1355, 232 U.S. App. D.C. 128 (1983), *cert. denied*, 467 U.S. 1251, 82 L. Ed. 2d 839, 104 S. Ct. 3533 (1984) (U.S. military aid to El Salvador).

[20] Because the Court concluded that plaintiffs lacked standing in that case, however, the court did need not reach the issue of whether this case is one in which the judicial branch has competence to adjudicate such questions. However, the principle for which the case is cited here is applicable.

> "To the extent that the President is arguing that *every* case brought by a legislator alleging a violation of the War Powers Clause raises a non-justiciable political question, he is wrong. See Baker v. Carr, 369 U.S. 186, 210-11, 7 L. Ed. 2d 663, 82 S. Ct. 691 (1962) ("It is error to suppose that *every* case or controversy which touches foreign relations lies beyond judicial cognizance....[The Court instead *must* conduct] a *discriminating analysis of the particular question posed*" in order to determine whether the issue is justiciable); Mitchell v. Laird, 488 F.2d at 614 (in *some instances there may be "judicial competence to determine the allocation, between the executive and legislative branches, of the powers to wage war"*)." (Emphasis added.)

Mitchell v. Laird, 159 U.S. App. D.C. 344, 488 F.2d 611, 614 (D.C. Cir. 1973), is instructive on the issue. In *Mitchell*, the Court of Appeals for D.C. Circuit made clear "courts do not lack the power and the ability to make the factual and legal determination of whether this nation's military actions constitute war for purposes of the constitutional War Clause." (488 F.2d at 614.) The *Mitchell* court said it did not "see any difficulty in a court facing up to the question as to whether because of the war's duration and magnitude the President is or was *without power* to continue the war without Congressional approval." (Emphasis added.) The court specifically stated:

> "Here the critical question to be initially decided is whether the *hostilities in Indo-China constitute in the Constitutional sense*

> *a "war"...Nor do we see any difficulty in a court facing up to the question as to whether because of the war's duration and magnitude the President is or was without power to continue the war without Congressional approval.* 488 F.2d at 614. In short, *Mitchell* stands for the proposition that *courts do not lack the power and the ability to make the factual and legal determination of whether this nation's military actions constitute war for purposes of the constitutional War Clause. See also,* Orlando v. Laird, 443 F.2d 1039 (2d Cir. 1971); Berk v. Laird, 429 F.2d 302 (2d Cir. 1970)." (159 U.S. App. D.C. 344.)

Judicial restraint is not appropriate in this case since the court is only asked to "interpret" an act of Congress based upon plain language common sense judicial review of the act in question. Constitutionally doubtful constructions should be avoided where "fairly possible."[21] However, where Congress has made its intent clear, "[the court] must give effect to that intent."[22] It is a cardinal principle" of statutory interpretation, however, that when an Act of Congress raises "a serious doubt" as to its constitutionality, "this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided."[23] In this

---

[21] Communications Workers v. Beck, 487 U.S. 735, 762, 101 L. Ed. 2d 634, 108 S. Ct. 2641 (1988).

[22] Sinclair Refining Co. v. Atkinson, 370 U.S. 195, 215, 8 L. Ed. 2d 440, 82 S. Ct. 1328 (1962), Miller v. French, 530 U.S. 327 (2000)

[23] Crowell v. Benson, 285 U.S. 22, 62, 76 L. Ed. 598. 52 S. Ct. 285 (1932); see also United States v. X-Citement Video, Inc., 513 U.S. 64, 78, 130 L. Ed. 2d 372, 115 S. Ct. 464 (1994); United States v. Jin Fuey Moy, 241 U.S. 394, 401, 60 L. Ed. 1061, 36 S. Ct. 658 (1916); cf. Almendarez-Torres v. United States, 523 U.S. 224, 238, 140 L. Ed. 2d 350, 118 S. Ct.

case, there is no reasonable interpretation of the Iraq Resolution that can avoid constitutional infirmity, violation of the War Powers Resolution of 1973, or permit violation of United Nation Resolutions. The canon of constitutional doubt permits the court to avoid constitutional questions only where the saving construction is not "plainly contrary to the intent of Congress."[24] "[The Court] cannot press statutory construction 'to the point of disingenuous evasion' even to avoid a constitutional question."[25] The constitutional doubt canon "does not give a court the prerogative to ignore the legislative will."[26] This court must consider the totality of the circumstances and the intent of the Iraq Resolution and exert its inherent authority to uphold the constitution and acts of Congress and to fashion a remedy appropriate to the circumstances. Courts do not lack the power and the ability to make the factual and legal determination of whether this nation's military actions constitute war for purposes of the constitutional War Clause.[27]

1219 (1998) (construction of statute that avoids invalidation best reflects congressional will).

[24] *Edward J. DeBartolo Corp. v. Florida Gulf Coast Building & Constr. Trades Council*, 485 U.S. 568, 575, 99 L. Ed. 2d 645, 108 S. Ct. 1392 (1988).

[25] *United States v. Locke*, 471 U.S. 84, 96, 85 L. Ed. 2d 64, 105 S. Ct. 1785 (1985) (quoting *George Moore Ice Cream Co. v. Rose*, 289 U.S. 373, 379, 77 L. Ed. 1265, 53 S. Ct. 620 (1933); see also *Pennsylvania Dept. of Corrections v. Yeskey*, 524 U.S. 206, 212, 141 L. Ed. 2d 215, 118 S. Ct. 1952 (1998) (constitutional doubt canon does not apply where the statute is unambiguous); *Commodity Futures Trading*

[26] *Comm'n v. Schor*, 478 U.S. 833, 841, 92 L. Ed. 2d 675, 106 S. Ct. 3245 (1986).

[27] Courts do not lack the power and the ability to make the factual and legal determination of whether this nation's military actions constitute war for purposes of the constitutional War Clause. *See Mitchell v. Laird*, 159 U.S. App. D.C. 344, 488 F.2d 611, 614 (D.C. Cir. 1973), *Orlando v. Laird*, 443 F.2d 1039 (2d Cir. 1971); *Berk v. Laird*, 429 F.2d 302 (2d Cir. 1970).

The well-established rule that the plain language of the enacted text is the best indicator of intent should be applied in this case.[28] As has been shown, the plain language of the War Powers Resolution and the Iraq Resolution establish that the use of overwhelming military force in Iraq is objectionable. Specifically, the power granted to the President and the Congress "exceeded" their authority under the War Powers Resolution of 1973. No agreement between the President and Congress can be made to circumvent, expand, or exceed, Constitutional limits or Acts of Congress whether in wartime or peace. This case urges that the court act solely upon the "inescapable duty of seeing that the mandates of the Constitution are obeyed" in peace as well as war. Enforcement of the Constitution and the War Powers Resolution of 1973 protects the United States against "clear imminent threats" to this nation and such threat is required before United States military forces can be deployed to other countries.[29]

1. There is a conflict between the Iraq Resolution and the War Powers Resolution.

As set forth in section "A" subsections 1, 2, 3, and 4 above there is a conflict between the Iraq Resolution and the War Powers Resolution. There may also be relevant

---

[28] See, *Nixon v. United States*, 506 U.S. 224, 234 (1993), *Utah v. Evans*, 536 U.S. 452 (2002) footnote 7, p. 487.

[29] The War Powers Act of 1973 does permit troop deployment into certain "hostilities." However, as discussed below, that situation does not "now" exist in Iraq and would not be here applicable. If the "hostilities" justification is applied it is being unconstitutionally applied or the provision is unconstitutional as vague and overbroad since it is subject to application in situations beyond constitutional permission.

interpretation concerns presented by the failure of the President to declare a "national emergency" created or caused by Iraq. Resolution of these issues is within the purview of this court.

2. Neither inherent expertise nor ready access to the type of current information necessary to render informed and valid judgments on matters of foreign affairs is required.

The court is asked to determine the issues that this case presents solely upon the Constitution, the War Powers Resolution, and the Iraq Resolution. This task does not require special knowledge of foreign affairs or information not available to this tribunal. It is a legal maxim that where the reason for the rule ceases, so should the rule.[30]

---

[30] In Drinan v. Nixon, 364 F. Supp. 854 (1973) the court set forth practical reasons why the court should exercise judicial restraint in matters of the conduct by the executive and legislative branches. The *Drinnon* court noted, "Although not all issues involving foreign relations are political questions, courts are particularly discriminating in determining the propriety of considering issues involving the conduct of foreign affairs by the executive and legislative branches. Baker v. Carr, 369 U.S. 186, 211, 82 S. Ct. 691, 7 L. Ed. 2d 663 (1962); Atlee v. Laird, 347 F. Supp. 689, 697 (E.D.Pa.1972) (three-judge court), affm'd summarily, 411 U.S. 911, 93 S. Ct. 1545, 36 L. Ed. 2d 304 (1973). There are compelling and practical reasons which underscore the necessity for judicial restraint in this area. Courts have neither *inherent expertise nor ready access to the type of current information necessary to render informed and valid judgments as to the wisdom of executive and congressional actions involving this country's relations with other sovereigns*. Not only does resolution of such issues frequently turn on standards that defy judicial application, or involve the exercise of a discretion demonstrably committed to the executive or legislature; but many such questions uniquely demand single-voiced statement of the Government's views.

3. There would be no political embarrassment or the creation of any inconsistent foreign policy.

President Bush had consistently and repeatedly asserted that he had not made the decision to use military force in Iraq and has expressed the desire to work through the United Nations. A decision by the court would not be inconsistent with the President" very own statements. Moreover, it would appear more consistent to the world for the United States processes of government to work in terms of being a society of government by laws with checks and balances. A declaration by the court would not impact on statements by the U.S. President regarding the position of the U.S. in a region's war and, moreover, would not create doubts in the international community regarding the resolve of the United States to adhere to any particular position. The President has expressed the desire to work with the United Nations to resolve the issues. Many conflicts, including Afghanistan, have established our nation's willingness to use military force when necessary. Saving face should never be a war policy. Nothing in any decision by the court would affect that policy. Showing that the law is supreme may enhance greater respect for the process of our government.

4. The President does not have the authority to make law.

"Repeal of statutes, no less than enactment, must conform with Art. I." *INS v. Chadha*, 462 U.S. 919, 954, 77 L. Ed. 2d 317, 103 S. Ct. 2764 (1983). There is no provision in the Constitution that authorizes the President to enact, to

amend, or to repeal statutes.[31] Permitting the President to make the sole determination that the use of military forces in Iraq – without a finding that Iraq poses a clear imminent threat to national security would be tantamount to amending the War Powers Resolution and beyond the authority of the President.

5. The Congress cannot grant the President authority it does not have.

The Congress cannot give power that it does not have and resolutions passed by Congress that exceed its constitutional and statutory authorities are objectionable. *Lichter v. United States*, 334 U.S. 742 (1948) the United States Supreme Court made clear the duties of the court in peace or in war asserting that it is essential that the Constitution be scrupulously obeyed and that the respective branches of the Government keep within the powers assigned to each by the Constitution. "*A constitutional power implies a power of delegation of authority under it sufficient to effect its purposes.* – This power is especially significant in connection with constitutional war powers under which the exercise of broad discretion as to methods to be employed may be essential to an effective use of its war powers by Congress. The degree to which Congress must specify its policies and standards in order that the administrative authority granted may not be an unconstitutional delegation of its own legislative power is not capable of precise

[31] Order of President seizing steel mills, which order directed that presidential policy be executed in manner prescribed by President, was unconstitutional since it was an attempt to enact law, which power is restricted to Congress. *Youngstown Sheet & Tube Co. v. Sawyer* (1952) 343 US 579, 96 L Ed 1153, 72 S Ct 863, 47 Ohio Ops 430, 62 Ohio L Abs 417, 30 BNA LRRM 2172, 21 CCH LC P 67008, 26 ALR2d 1378.

definition. In peace or in war it is essential that the Constitution be scrupulously obeyed, and that the respective branches of the Government keep within the powers assigned to each by the Constitution." (334 U.S. 742, 779, 780) (Emphasis in original.)

CONCLUSION

There was no specific *finding or resolution* contained in the Iraq Resolution that a "clearly imminent" threat existed to the national security of the United States *by Iraq* or that *Iraq* poses any "unusual" or "extraordinary" threat to the security of this nation that would permit the overwhelming use of military force. The court should act to uphold the specific requirements of the War Powers Resolution and guard the protections it made to the Constitutional use of military force in foreign countries. We should not sacrifice our Constitution for the sake of unity alone. A decision by the court is necessary in order to avoid establishing historical precedent for perpetual war on any country that poses any threat no matter how remote. The law so requires.

The Petition for a writ of certiorari should be granted.

DATED this 19th day of November, 2004.

CLAIR A. CALLAN, *pro se*
1621 H Street
Fairbury, Nebraska 68352
(402) 729-3119

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

Clair A. Callan Appellant,	)	No. 03-4047
v.	)	Appeal from the United States District Court for the District of Nebraska
George W. Bush, acting as President of the United States, Appellee.	)	[UNPUBLISHED]

Submitted: July 7, 2004
Filed: July 26, 2004

Before MORRIS SHEPPARD ARNOLD, FAGG, and SMITH, Circuit Judges.

PER CURIAM.

Clair A. Callan appeals the district court's[1] dismissal with prejudice of his injunctive-relief action. Upon careful review of the record, we conclude dismissal was proper for lack of jurisdiction. Accordingly, we affirm. See 8th Cir. R. 47A(a). We deny appellee's pending motion.

[1] The Honorable Richard G. Kopf, Chief Judge, United States District Court for the District of Nebraska.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

Clair A. Callan Plaintiff,	)	
	)	4:03CV3405
v.	)	
	)	JUDGMENT
George W. Bush, acting as President of the United States, Defendant.	)	

In accordance with the Memorandum and Order filed on this date,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that this action and the Motion for Temporary Restraining Order/Preliminary Injunction filed by the plaintiff, Clair A. Callan, are dismissed with prejudice.

DATED this 2nd day of December, 2003.

BY THE COURT:

/s/ RICHARD G. KOPF
Chief District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

Clair A. Callan Plaintiff,	)	
	)	4:03CV3405
v.	)	
	)	MEMORANDUM
George W. Bush, acting as President of the United States, Defendant.	)	AND ORDER

This matter is before the court on filing no. 1, the "Motion for Temporary Restraining Order/Preliminary Injunction" filed by the pro se plaintiff, Clair A. Callan. As discussed below, the motion and the above-entitled case must be dismissed with prejudice.

The plaintiff seeks the cessation of all non-defensive military action in Iraq and an order to house the armed forces of the United States in secure locations until agreement is reached between the United States and the United Nations, and possibly other international organizations, regarding United States' troop withdrawals and other matters. The plaintiff alleges that if a citizen does not have standing in federal court to raise these issues, "society is helpless to confront the chaos and tragedy of Iraq [where] American troops are being killed and wounded daily [and] Iraqi citizens are dying from violence."

In an earlier case in which Mr. Callan sought an order directing President Bush to bring an end to the war in Iraq, I explained that the claim of a plaintiff who lacks standing in

federal court, and a claim which presents a political question, must be dismissed for lack of a justiciable controversy. See filing no. 19 in Case No. 4:03cv3060 (D. Neb.). The same reasoning applies here. Therefore, I incorporate herein filing no. 19 in Case No. 4:03cv3060, and I emphasize that the federal courts are not empowered or equipped to conduct the nation's foreign policy, even at the request of a litigant.

THEREFORE, IT IS ORDERED:

1. That filing no. 1, the plaintiff's Motion for Temporary Restraining Order/Preliminary Injunction, is denied;

2. That this action is dismissed with prejudice; and

3. That a separate judgment will be entered in accordance with this Memorandum and Order.

DATED this 2nd day of December, 2003.

BY THE COURT:

/s/ RICHARD G. KOPF
Chief District Judge

App. 5

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

Clair A. Callan Plaintiff,	)	
	)	CASE NO. 4:03CV3405
v.	)	
	)	MOTION FOR
George W. Bush, acting as President of the United States, Defendant.	)	TEMPORARY ORDER/PRELIMINARY INJUNCTION

Plaintiff, Clair A. Callan, moves the Court to issue a Temporary Restraining Order/Preliminary Injunction enjoining the Defendant, George W. Bush, the President of the United States, and his agents, servants, employees, and attorneys as follows:

The cessation of all non-defensive military action in Iraq, including police action, and order all troops of the United States to be quartered and housed in secured locations in Iraq until such time as the United States and the United Nations agree on a resolution or resolutions where the United Nations and/or if possible other international organizations (N.A.T.O.) and the United States agree that the United Nations or a coalition take a lead position, relieve American troops from police and security affairs in Iraq, and also agree on a plan that includes an immediate withdrawal of a significant number American armed forces.

The grounds of this application are as follows:

1. H J Res 114 (The Iraq Resolution) did not give the President the power to invade Iraq with a massive force.

2. Whereas the Congress delegated powers to the President that were not theirs to give, whereas a situation of chaos and carnage exists in Iraq that has not occurred in the history of the United States, whereas for the sake of humanity the courts must react in this case on the constitutional question as to the constitutionality of H J 114 (The Iraq Resolution) that violated the purpose, intent, spirit, and specific language of the War Powers Act of 1973.

There are additional issues and violations discussed in relation to this case, but a ruling is requested on only two issues as follows:

1. The constitutionality of H J Res 114
2. The question of standing of the plaintiff discussed in section 2.

THE ISSUE OF STANDING

Unless a citizen has standing in Court to sue on this issue, society is helpless to confront the chaos and tragedy of Iraq. American troops are being killed and wounded daily, Iraqi citizens are dying from violence.

This case is unique in history. Therefore I pray the Court rules that the issue of justicable controversy is settled by the arguments stated in pages 10-16, Section 2.

Unless restrained, the President will continue a policy that places American troops in an untenable position that has resulted in the unnecessary casualties and death to both American, coalition forces, and the general population of Iraq.

Dated this _23__ day of November, 2003.

Respectfully submitted,

Clair A. Callan

HOUSE JOINT RESOLUTION AUTHORIZING USE OF FORCE AGAINST IRAQ, OCTOBER 10, 2002

(House of Representatives approves resolution October 10)

Following is the text of House Joint Resolution 114, "To authorize the use of United States Armed Forces against Iraq," approved in the House of Representatives October 10, by a vote of 296 to 133:
(begin text)

107th CONGRESS 2d Session H. J. RES. 114 To authorize the use of United States Armed Forces against Iraq, IN THE HOUSE OF REPRESENTATIVES October 2, 2002

JOINT RESOLUTION

To authorize the use of United States Armed Forces against Iraq.

Whereas in 1990 in response to Iraq's war of aggression against and illegal occupation of Kuwait, the United States forged a coalition of nations to liberate Kuwait and its people in order to defend the national security of the United States and enforce United Nations Security Council resolutions relating to Iraq;

Whereas after the liberation of Kuwait in 1991, Iraq entered into a United Nations sponsored cease-fire agreement pursuant to which Iraq unequivocally agreed, among other things, to eliminate its nuclear, biological, and chemical weapons programs and the means to deliver and develop them, and to end its support for international terrorism;

Whereas the efforts of international weapons inspectors, United States intelligence agencies, and Iraqi defectors led to the discovery that Iraq had large stockpiles of chemical weapons and a large scale biological weapons program, and that Iraq had an advanced nuclear weapons development program that was much closer to producing a nuclear weapon than intelligence reporting had previously indicated;

Whereas Iraq, in direct and flagrant violation of the cease-fire, attempted to thwart the efforts of weapons inspectors to identify and destroy Iraq's weapons of mass destruction stockpiles and development capabilities, which finally resulted in the withdrawal of inspectors from Iraq on October 31, 1998;

Whereas in Public Law 105-235 (August 14, 1998), Congress concluded that Iraq's continuing weapons of mass destruction programs threatened vital United States interests and international peace and security, declared Iraq to be in 'material and unacceptable breach of its international obligations' and urged the President 'to take appropriate action, in accordance with the Constitution and relevant laws of the United States, to bring Iraq into compliance with its international obligations;'

Whereas Iraq both poses a continuing threat to the national security of the United States and international peace and security in the Persian Gulf region and remains in material and unacceptable breach of its international obligations by, among other things, continuing to possess and develop a significant chemical and biological weapons capability, actively seeking a nuclear weapons capability, and supporting and harboring terrorist organizations;

Whereas Iraq persists in violating resolution of the United Nations Security Council by continuing to engage in brutal

repression of its civilian population thereby threatening international peace and security in the region, by refusing to release, repatriate, or account for non-Iraqi citizens wrongfully detained by Iraq, including an American serviceman, and by failing to return property wrongfully seized by Iraq from Kuwait;

Whereas the current Iraqi regime has demonstrated its capability and willingness to use weapons of mass destruction against other nations and its own people;

Whereas the current Iraqi regime has demonstrated its continuing hostility toward, and willingness to attack, the United States, including by attempting in 1993 to assassinate former President Bush and by firing on many thousands of occasions on United States and Coalition Armed Forces engaged in enforcing the resolutions of the United Nations Security Council;

Whereas members of al Qaida, an organization bearing responsibility for attacks on the United States, its citizens, and interests, including the attacks that occurred on September 11, 2001, are known to be in Iraq;

Whereas Iraq continues to aid and harbor other international terrorist organizations, including organizations that threaten the lives and safety of United States citizens;

Whereas the attacks on the United States of September 11, 2001, underscored the gravity of the threat posed by the acquisition of weapons of mass destruction by international terrorist organizations;

Whereas Iraq's demonstrated capability and willingness to use weapons of mass destruction, the risk that the current Iraqi regime will either employ those weapons to launch a

surprise attack against the United States or its Armed Forces or provide them to international terrorists who would do so, and the extreme magnitude of harm that would result to the United States and its citizens from such an attack, combine to justify action by the United States to defend itself;

Whereas United Nations Security Council Resolution 678 (1990) authorizes the use of all necessary means to enforce United Nations Security Council Resolution 660 (1990) and subsequent relevant resolutions and to compel Iraq to cease certain activities that threaten international peace and security, including the development of weapons of mass destruction and refusal or obstruction of United Nations weapons inspections in violation of United Nations Security Council Resolution 687 (1991), repression of its civilian population in violation of United Nations Security Council Resolution 688 (1991), and threatening its neighbors or United Nations operations in Iraq in violation of United Nations Security Council Resolution 949 (1994);

Whereas in the Authorization for Use of Military Force Against Iraq Resolution (Public Law 102-1), Congress has authorized the President 'to use United States Armed Forces pursuant to United Nations Security Council Resolution 678 (1990) in order to achieve implementation of Security Council Resolution 660, 661, 662, 664, 665, 666, 667, 669, 670, 674, and 677;'

Whereas in December 1991, Congress expressed its sense that it 'supports the use of all necessary means to achieve the goals of United Nations Security Council Resolution 687 as being consistent with the Authorization of Use of Military Force Against Iraq Resolution (Public Law 102-1),' that Iraq's repression of its civilian population violates United Nations Security Council Resolution 688 and 'constitutes a continuing threat to the peace, security, and stability of the Persian Gulf region,' and that Congress, 'supports the use of

all necessary means to achieve the goals of United Nations Security Council Resolution 688;'

Whereas the Iraq Liberation Act of 1998 (Public Law 105-338) expressed the sense of Congress that it should be the policy of the United States to support efforts to remove from power the current Iraqi regime and promote the emergence of a democratic government to replace that regime;

Whereas on September 12, 2002, President Bush committed the United States to 'work with the United Nations Security Council to meet our common challenge' posed by Iraq and to 'work for the necessary resolutions,' while also making clear that 'the Security Council resolutions will be enforced, and the just demands of peace and security will be met, or action will be unavoidable;'

Whereas the United States is determined to prosecute the war on terrorism and Iraq's ongoing support for international terrorist groups combined with its development of weapons of mass destruction in direct violation of its obligations under the 1991 cease-fire and other United Nations Security Council resolutions make clear that it is in the national security interests of the United States and in furtherance of the war on terrorism that all relevant United Nations Security Council resolutions be enforced, including through the use of force if necessary;

Whereas Congress has taken steps to pursue vigorously the war on terrorism through the provision of authorities and funding requested by the President to take the necessary actions against international terrorists and terrorist organizations, including those nations, organizations, or persons who planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such persons or organizations;

Whereas the President and Congress are determined to continue to take all appropriate actions against international terrorists and terrorist organizations, including those nations, organizations, or persons who planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such persons or organizations;

Whereas the President has authority under the Constitution to take action in order to deter and prevent acts of international terrorism against the United States, as Congress recognized in the joint resolution on Authorization for Use of Military Force (Public Law 107-40); and

Whereas it is in the national security interests of the United States to restore international peace and security to the Persian Gulf region: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This joint resolution may be cited as the 'Authorization for Use of Military Force Against Iraq Resolution of 2002.'

SEC. 2. SUPPORT FOR UNITED STATES DIPLOMATIC EFFORTS.

The Congress of the United States supports the efforts by the President to –

(1) strictly enforce through the United Nations Security Council all relevant Security Council resolutions regarding Iraq and encourages him in those efforts; and

(2) obtain prompt and decisive action by the Security Council to ensure that Iraq abandons its strategy of delay, evasion and noncompliance and promptly and strictly complies with all relevant Security Council resolutions regarding Iraq.

SEC. 3. AUTHORIZATION FOR USE OF UNITED STATES ARMED FORCES.

(a) AUTHORIZATION- The President is authorized to use the Armed Forces of the United States as he determines to be necessary and appropriate in order to –

(1) defend the national security of the United States against the continuing threat posed by Iraq; and

(2) enforce all relevant United Nations Security Council resolutions regarding Iraq.

(b) PRESIDENTIAL DETERMINATION- In connection with the exercise of the authority granted in subsection (a) to use force the President shall, prior to such exercise or as soon thereafter as may be feasible, but no later than 48 hours after exercising such authority, make available to the Speaker of the House of Representatives and the President pro tempore of the Senate his determination that –

(1) reliance by the United States on further diplomatic or other peaceful means alone either (A) will not adequately protect the national security of the United States against the continuing threat posed by Iraq or (B) is not likely to lead to enforcement of all relevant United Nations Security Council Resolutions regarding Iraq; and

(2) acting pursuant to this joint resolution is consistent with the United States and other countries continuing to take the

necessary actions against international terrorist and terrorist organizations, including those nations, organizations, or persons who planned, authorized, committed or aided the terrorist attacks that occurred on September 11, 2001.

(c) War Powers Resolution Requirements-

(1) SPECIFIC STATUTORY AUTHORIZATION- Consistent with section 8(a)(1) of the War Powers Resolution, the Congress declares that this section is intended to constitute specific statutory authorization within the meaning of section 5(b) of the War Powers Resolution.

(2) APPLICABILITY OF OTHER REQUIREMENTS- Nothing in this joint resolution supersedes any requirement of the War Powers Resolution.

SEC. 4. REPORTS TO CONGRESS.

(a) REPORTS- The President shall, at least once every 60 days, submit to the Congress a report on matters relevant to this joint resolution, including actions taken pursuant to the exercise of authority granted in section 3 and the status of planning for efforts that are expected to be required after such actions are completed, including those actions described in section 7 of the Iraq Liberation Act of 1998 (Public Law 105-338).

(b) SINGLE CONSOLIDATED REPORT- To the extent that the submission of any report described in subsection (a) coincides with the submission of any other report on matters relevant to this joint resolution otherwise required to be submitted to Congress pursuant to the reporting requirements of the War Powers Resolution (Public Law 93-148), all such reports may be submitted as a single consolidated report to the Congress.

(c) RULE OF CONSTRUCTION- To the extent that the information required by section 3 of the Authorization for Use of Military Force Against Iraq Resolution (Public Law 102-1) is included in the report required by this section, such report shall be considered as meeting the requirements of section 3 of such resolution.

(end text)

THE WAR POWERS ACT OF 1973

JOINT RESOLUTION

Concerning the war powers of Congress and the President.

Resolved by the Senate and the House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This joint resolution may be cited as the "War Powers Resolution."

PURPOSE AND POLICY

SEC. 2. (a) It is the purpose of this joint resolution to fulfill the intent of the framers of the Constitution of the United States and insure that the collective judgment of both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and to the continued use of such forces in hostilities or in such situations.

SEC. 2. (b) Under article I, section 8, of the Constitution, it is specifically provided that the Congress shall have the power to make all laws necessary and proper for carrying into execution, not only its own powers but also all other powers vested by the Constitution in the Government of the United States, or in any department or officer thereof.

SEC. 2. (c) The constitutional powers of the President as Commander-in-Chief to introduce United States Armed Forces into hostilities, or into situations where imminent

involvement in hostilities is clearly indicated by the circumstances, are exercised only pursuant to (1) a declaration of war, (2) specific statutory authorization, or (3) a national emergency created by attack upon the United States, its territories or possessions, or its armed forces.

CONSULTATION

SEC. 3. The President in every possible instance shall consult with Congress before introducing United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and after every such introduction shall consult regularly with the Congress until United States Armed Forces are no longer engages in hostilities or have been removed from such situations.

REPORTING

SEC. 4. (a) In the absence of a declaration of war, in any case in which United States Armed Forces are introduced—

(1) into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances;

(2) into the territory, airspace or waters of a foreign nation, while equipped for combat, except for deployments which relate solely to supply, replacement, repair, or training of such forces; or

(3) (A) the circumstances necessitating the introduction of United States Armed Forces;

(3) (B) the constitutional and legislative authority under which such introduction took place; and

(3) (C) the estimated scope and duration of the hostilities or involvement.

SEC. 4. (b) The President shall provide such other information as the Congress may request in the fulfillment of its constitutional responsibilities with respect to committing the Nation to war and to the use of United States Armed Forces abroad.

SEC. 4 (c) Whenever United States Armed Forces are introduced into hostilities or into any situation described in subsection (a) of this section, the President shall, so long as such armed forces continue to be engaged in such hostilities or situation, report to the Congress periodically on the status of such hostilities or situation as well as on the scope and duration of such hostilities or situation, but in no event shall he report to the Congress less often than once every six months.

CONGRESSIONAL ACTION

SEC. 5. (a) Each report submitted pursuant to section 4(a)(1) shall be transmitted to the Speaker of the House of Representatives and to the President pro tempore of the Senate on the same calendar day. Each report so transmitted shall be referred to the Committee on Foreign Affairs of the House of Representatives and to the Committee on Foreign Relations of the Senate for appropriate action. If, when the report is transmitted, the Congress has adjourned sine die or has adjourned for any period in excess of three calendar days, the Speaker of the House of Representatives and the President pro tempore of the Senate, if they deem it advisable (or if petitioned by at least 30 percent of the membership of their respective Houses) shall jointly request the President to

convene Congress in order that it may consider the report and take appropriate action pursuant to this section.

SEC. 5. (b) Within sixty calendar days after a report is submitted or is required to be submitted pursuant to section 4(a)(1), whichever is earlier, the President shall terminate any use of United States Armed Forces with respect to which such report was submitted (or required to be submitted), unless the Congress (1) has declared war or has enacted a specific authorization for such use of United States Armed Forces, (2) has extended by law such sixty-day period, or (3) is physically unable to meet as a result of an armed attack upon the United States. Such sixty-day period shall be extended for not more than an additional thirty days if the President determines and certifies to the Congress in writing that unavoidable military necessity respecting the safety of United States Armed Forces requires the continued use of such armed forces in the course of bringing about a prompt removal of such forces.

SEC. 5. (c) Notwithstanding subsection (b), at any time that United States Armed Forces are engaged in hostilities outside the territory of the United States, its possessions and territories without a declaration of war or specific statutory authorization, such forces shall be removed by the President if the Congress so directs by concurrent resolution.

CONGRESSIONAL PRIORITY PROCEDURES FOR JOINT RESOLUTION OR BILL

SEC. 6. (a) Any joint resolution or bill introduced pursuant to section 5(b) at least thirty calendar days before the expiration of the sixty-day period specified in such section shall be referred to the Committee on Foreign Affairs of the House of Representatives or the Committee on Foreign Relations of the Senate, as the case may be, and such committee shall

report one such joint resolution or bill, together with its recommendations, not later than twenty-four calendar days before the expiration of the sixty-day period specified in such section, unless such House shall otherwise determine by the yeas and nays.

SEC. 6. (b) Any joint resolution or bill so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents), and shall be voted on within three calendar days thereafter, unless such House shall otherwise determine by yeas and nays.

SEC. 6. (c) Such a joint resolution or bill passed by one House shall be referred to the committee of the other House named in subsection (a) and shall be reported out not later than fourteen calendar days before the expiration of the sixty-day period specified in section 5(b). The joint resolution or bill so reported shall become the pending business of the House in question and shall be voted on within three calendar days after it has been reported, unless such House shall otherwise determine by yeas and nays.

SEC. 6. (d) In the case of any disagreement between the two Houses of Congress with respect to a joint resolution or bill passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such resolution or bill not later than four calendar days before the expiration of the sixty-day period specified in section 5(b). In the event the conferees are unable to agree within 48 hours, they shall report back to their respective Houses in disagreement. Notwithstanding any rule in either House concerning the printing of conference reports in the Record or concerning any delay in the consideration of such reports, such report shall be acted

on by both Houses not later than the expiration of such sixty-day period.

CONGRESSIONAL PRIORITY PROCEDURES FOR CONCURRENT RESOLUTION

SEC. 7. (a) Any concurrent resolution introduced pursuant to section 5(b) at least thirty calendar days before the expiration of the sixty-day period specified in such section shall be referred to the Committee on Foreign Affairs of the House of Representatives or the Committee on Foreign Relations of the Senate, as the case may be, and one such concurrent resolution shall be reported out by such committee together with its recommendations within fifteen calendar days, unless such House shall otherwise determine by the yeas and nays.

SEC. 7. (b) Any concurrent resolution so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents), and shall be voted on within three calendar days thereafter, unless such House shall otherwise determine by yeas and nays.

SEC. 7. (c) Such a concurrent resolution passed by one House shall be referred to the committee of the other House named in subsection (a) and shall be reported out by such committee together with its recommendations within fifteen calendar days and shall thereupon become the pending business of such House and shall be voted on within three calendar days after it has been reported, unless such House shall otherwise determine by yeas and nays.

SEC. 7. (d) In the case of any disagreement between the two Houses of Congress with respect to a concurrent resolution passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and

file a report with respect to such concurrent resolution within six calendar days after the legislation is referred to the committee of conference. Notwithstanding any rule in either House concerning the printing of conference reports in the Record or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than six calendar days after the conference report is filed. In the event the conferees are unable to agree within 48 hours, they shall report back to their respective Houses in disagreement.

INTERPRETATION OF JOINT RESOLUTION

SEC. 8. (a) Authority to introduce United States Armed Forces into hostilities or into situations wherein involvement in hostilities is clearly indicated by the circumstances shall not be inferred—

(1) from any provision of law (whether or not in effect before the date of the enactment of this joint resolution), including any provision contained in any appropriation Act, unless such provision specifically authorizes the introduction of United States Armed Forces into hostilities or into such situations and stating that it is intended to constitute specific statutory authorization within the meaning of this joint resolution; or

(2) from any treaty heretofore or hereafter ratified unless such treaty is implemented by legislation specifically authorizing the introduction of United States Armed Forces into hostilities or into such situations and stating that it is intended to constitute specific statutory authorization within the meaning of this joint resolution.

SEC. 8. (b) Nothing in this joint resolution shall be construed to require any further specific statutory authorization to permit members of United States Armed Forces to participate

jointly with members of the armed forces of one or more foreign countries in the headquarters operations of high-level military commands which were established prior to the date of enactment of this joint resolution and pursuant to the United Nations Charter or any treaty ratified by the United States prior to such date.

SEC. 8. (c) For purposes of this joint resolution, the term "introduction of United States Armed Forces" includes the assignment of members of such armed forces to command, coordinate, participate in the movement of, or accompany the regular or irregular military forces of any foreign country or government when such military forces are engaged, or there exists an imminent threat that such forces will become engaged, in hostilities.

SEC. 8. (d) Nothing in this joint resolution—

(1) is intended to alter the constitutional authority of the Congress or of the President, or the provision of existing treaties; or

(2) shall be construed as granting any authority to the President with respect to the introduction of United States Armed Forces into hostilities or into situations wherein involvement in hostilities is clearly indicated by the circumstances which authority he would not have had in the absence of this joint resolution.

SEPARABILITY CLAUSE

SEC. 9. If any provision of this joint resolution or the application thereof to any person or circumstance is held invalid, the remainder of the joint resolution and the application of such provision to any other person or circumstance shall not be affected thereby.

EFFECTIVE DATE

SEC. 10. This joint resolution shall take effect on the date of its enactment.

CARL ALBERT

Speaker of the House of Representatives.

JAMES O. EASTLAND

President of the Senate pro tempore.

IN THE HOUSE OF REPRESENTATIVES, U.S.,

November 7, 1973.

The House of Representatives having proceeded to reconsider the resolution (H. J. Res. 542) entitled "Joint resolution concerning the war powers of Congress and the President," returned by the President of the United States with his objections, to the House of Representatives, in which it originated, it was

Resolved, That the said resolution pass, two-thirds of the House of Representatives agreeing to pass the same.

Attest:

W. PAT JENNINGS

Clerk.

I certify that this Joint Resolution originated in the House of Representatives.

W. PAT JENNINGS

Clerk.

IN THE SENATE OF THE UNITED STATES

November 7, 1973

The Senate having proceeded to reconsider the joint resolution (H. J. Res. 542) entitled "Joint resolution concerning the war powers of Congress and the President," returned by the President of the United States with his objections to the House of Representatives, in which it originated, it was

Resolved. That the said joint resolution pass, two-thirds of the Senators present having voted in the affirmative.

Attest:

FRANCIS R. VALEO

Secretary.